

## **Board of Forestry and Fire Protection**

### **Notice of Proposed Emergency Action, pursuant to GOV § 11346.1(b)**

#### **“Safety Hazard Reduction Regulatory Relief”**

**Notice Date:** XXXXXX

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted an emergency regulation to provide regulatory relief for an emergency condition (explain conditions e.g., Boles Fire) relating to public safety and hazardous conditions. The regulation effects private and state lands where a permit is required by the Board for tree removal, in accordance with existing statute PRC § 4592, Emergency notice; content. The proposed rule defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments and environmental protection measures related to the removal of live and dead fuel (vegetation) hazards near communities, roads and infrastructure facilities. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of 14 CCR §1052.4, Emergency Notice for Fuel Hazard Reduction. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6. The Board adopted the emergency regulation at their meeting scheduled on XXXXXXXX. This regulation will be submitted to the Office of Administrative Law on XXXXXXXX.

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within five **calendar** days of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

**Mail:**

OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814

**Fax:**

(916) 323-6826

**E-mail:**

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency’s specified contact person provided below.

**Mail:**

(Name of Regulations Coordinator)  
Regulations Coordinator

Board of Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, CA 944244-2460

**Fax:**  
(916) 653-0989

**E-mail:**  
[publiccomments@BOF.ca.gov](mailto:publiccomments@BOF.ca.gov)

This regulation will be submitted to the Office of Administrative Law on **XXXXXX**. **The public comment period closes at 5:00 PM on July 6, 2015.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR Section 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

#### **EXAMPLE OF FINDINGS:**

PRC § 4592 authorizes the Board to adopt regulation that allows a registered professional forester (RPF) to prepare and file an emergency notice on behalf of a timber owner or operator if a bona fide emergency exists. Emergencies are defined by the Board.

Emergencies have been defined by the Board pursuant to 14 CCR § 1052.1 and include, but are not limited to trees that have been killed or injured as a result of insects, disease, parasites, animal damage, wind, freezing, flood fire, drought, landslide or earthquake.

Additionally, pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt includes measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

State Board of Forestry and Fire Protection (Board) recognizes the urgent, extensive and on-going hazard existing in (describe the physical location of the emergency e.g, Weed, Ca)

resulting from the (provide the name of the incident e.g., Boles Fire). This hazard is a significant threat to human and natural resources in xxxxxxxx . The imminent emergency nature of the hazard problem has also been recognized by (provide name of other agencies, or entities that have recognized or declared an emergency proclamation).

The Board finds there is an emergency situation present with action needed for immediate preservation of the public peace, health and safety, and the general welfare. The emergency situation is found in the following:

- The values at stake in wildland fire protection are extensive and at imminent threat. The Board finds that over 5.4 million acres of all vegetation types in the wildland urban interface have significant fire threat with over 4.9 million housing units are exposed to High, Very High or Extreme Fire Threat as defined by the California Department of Forest and Fire Protection's Fire and Resource Assessment Program. Natural resources are also at risk, with nearly 17 million acres of diverse ecosystems ranging from pine forests in the Klamath/North Coast region to coastal sage scrub communities along the South Coast have high fire threat, where substantial damage to ecological values such as habitat, water quality and quantity, and carbon sequestration could occur following fires.
- The combination of fuel, weather and valuable human and natural resource assets have created in increasing amount of wildfire and increasing losses.

Given these situations, the Board declares an emergency condition is found relating to wildlife threat and hazardous conditions in (describe the physical location of the emergency e.g., Weed, Ca), in accordance with existing statute PRC §4592, Emergency notice; content. To address this condition, action is needed for cutting and removal hazardous trees. This action is necessary to better coordinate with federal planning and opportunities, and to expedite projects to increase safety for private citizens, emergency services personnel, and the overall public health and safety of California, by reducing threats where public safety risks are excessive.

The Board finds that regulatory amendments, within the scope of existing legislation and the Forest Practice Rules (Title 14 CCR, Chapters 4, 4.5 and 10), are necessary to provide regulatory relief for expedited fuel hazard reduction of live and dead fuels.

The Board finds that allowing filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions creates regulatory relief.

The Board finds the general scope of treatment for hazard reduction is of greatest need in (describe the physical location of the emergency e.g, Weed, Ca), with significant safety threats primarily within the "Wildland Urban Interface". This scope focuses on locations in the forested landscape where human assets and wildland conditions are found. Within this area, the primary target groups are private landowners, who often have the least means and capability to complete safety projects in communities.

The Board finds the regulation has incorporated mitigation measures that will eliminate or substantially lessen significant effects on the environment where feasible.

The Board finds the remaining unavoidable impacts, if any, are acceptable in light of the environmental, economic, legal, social, and other considerations, because the benefits of the regulation outweigh the significant and adverse impacts. With implementation of these mitigations, effects will be substantially lessened or eliminated. However, all impacts may not be avoided, particularly related to impacts on wildlife habitat and visual screening. If any impacts remain they are likely minor, and more than overridden by the catastrophic losses resulting from wildfire to life, property, human health, and natural resources considered in the Board's Emergency Condition Declaration in accordance with PRC 4592, adopted June 9, 2004.

The Board finds the regulatory action related to this declaration shall be implemented as an Emergency Regulation in accordance with the GC 11346.1 of the California Rulemaking Law of the Administrative Procedure Act. Such emergency rule making is necessitated by the findings described in this declaration. In accordance with the code, such regulation would be in effect for 120 days. During this time frame, it is the intention of the Board to evaluate permanent regulations that address the emergency condition.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

**14 CCR § 1038** Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4516, 4527 and 4584, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.

**14 CCR § 1052.1** Note: Authority cited: Sections 4551 and 4552, Public Resources Code. Reference: Sections 4592, 4750, 4750.3 and 4750.4, Public Resources Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Pursuant to **1 CCR § 48**, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

"Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow

interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working day notice. The proposed action was, at a minimum, posted on the Board’s website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

### **INFORMATIVE DIGEST**

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584, which was chaptered in 1989, the Board is authorized, upon determining that the exemption is consistent with the purposes of CHAPTER 8. Z'berg-Nejedly Forest Practice Act of 1973 (FPA), to exempt from this FPA, or portions of this FPA, a person engaged in specific forest management activities.

Specifically, PRC § 4584(c), authorizes the Board to adopt regulation to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to a person engaging in specified forest management activities, including, the cutting or removal of dead, dying, or diseased trees of any size.

Additionally, pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt includes measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

Pursuant to this statutory authority, the Board amended 14 CCR §§ 1038, by adding a new subsection (k), and 1052.1 in accordance with the provisions of the statute.

In the past, pursuant to PRC § 4584(c), the Board adopted 14 CCR § 1038(b) and (d), which limits, in subsection (b), the harvest volume of dead, dying and diseased trees to less than 10% of the volume per acre and, in subsection (d), harvesting dead trees which are unmerchantable as sawlog-size timber from substantially damaged timberlands. The proposed action, captured in new subsection (k), does not impose these limitations.

The effect of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees. The regulation also includes the addition of drought as one of the conditions that constitute an emergency in order to enable a person to submit an Emergency Notice to harvest trees that are fallen, damaged, dead or dying as a result of this condition.

The primary benefit of the proposed action is to facilitate the reduction in risk to life, property and the environment posed by dead and dying trees by streamlining the harvest and removal of them, enabling landowners to address the fuel conditions being made worse by the drought and tree mortality and the falling tree hazard. Additional benefits

may include a monetary return and improved aesthetics. It is likely that California will continue to experience large and damaging wildfires that threaten people's lives and destroy homes. This exemption will incentivize landowners to harvest and remove dead and dying trees that will reduce the risk of loss of life and property damage and the negative impact that is associated with large and damaging wildfires that impact State's watershed, negatively impact fisheries and wildlife habitat, negatively impact public health and water supply and quality, increase GHG emissions and devastate local economies.

The proposed action does not differ substantially from an existing comparable federal regulation or statute

The proposed regulation is not inconsistent or incompatible with existing state regulations; it amends it, providing another exemption.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(4)**. There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**. The costs or savings to any State agency are as follows. Otherwise no costs or savings to any State agency are expected.

Pursuant to 14 CCR §, 1038(k)(8), the Department shall monitor and report on the statewide use of the exemption, allowed under 14 CCR § 1038(k), including the number of harvest area acres, the areas of application and the degree of compliance. The Department shall, prior to the expiration date, report its findings, to the Board. The cost to the Department to collect and report the information specified in 14 CCR § 1038(k)(8) is estimated in the fiscal impact portion of the standard form 399, which is part of the rulemaking file.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

Pursuant to **GOV § 11349(f) and 1 CCR §12**, following is the information required by **1 CCR §12**.

The regulation repeats or rephrases in whole or in part statute and existing regulation because it is necessary to satisfy the "clarity" standard of Government Code Section 11349.1(a)(3). Repeating and rephrasing the statute provides context for the addition of the 14 CCR § 1038(k) exemption. Additionally, it would be cumbersome to wholly require a person to have to cross reference the statute and other portions of the Forest Practice Rules (14 CCR).

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GC § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GC §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)).** *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is trees are dying due to drought related stress and broad areas where dead and dying trees dominate the forest landscape have been reported and are expected to increase in size and number of areas. The large number of dead trees creates a fire hazard in both the short and long term. Additionally, dead trees represent a potential hazard to any life or property within reach of them because as they deteriorate they may fall in whole or in pieces.

The purpose of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees. The regulation also includes the addition of drought as one of the conditions that constitute an emergency in order to enable a person to submit an Emergency Notice to harvest trees that are fallen, damaged, dead or dying as a result of this condition.

#### **Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules**

In some instances the language contained within the proposed rule text, duplicates language within § 4584(c) of the Public Resources Code and §§ 895.1, 919.1, 1038(b)(9), 1038(c)(5)(A), 1038(e), 1038(h) 1052.4(c) of Title 14 of the California Code of Regulations.

Duplication was used as tool to make it congruent with statute and to provide context and have all related information in one place so that the burden of having to reference both statute and other portions of the Forest Practice Rules (14 CCR) is not placed on the regulated public.

Also, duplication of relevant existing regulations in the proposed action was determined to be a prudent measure because they were developed and informed by experts in the field of forestry and through a collaborative effort between landowner, industry, agency and environmental representatives. These duplicated regulations were subsequently used to develop the provisions described in the proposed action.

Where the statute is made specific or interpreted an explanation, regarding why the proposed rule reasonably necessary to carry out the purpose and to address the problem for which it is proposed, is provided.



**Provide a plain English interpretation of the adopted regulation(s) here by code section.**